UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

TODD SEMON, on behalf of himself, and all others similarly situated, Plaintiff, v. ROCK OF AGES CORPORATION, SWENSON GRANITE COMPANY, LLC, KURT M. SWENSON, JAMES L. FOX, RICHARD C. KIMBALL, DONALD LABONTE, LAURA A. PLUDE, PAMELA G. SHEIFFER, CHARLES M. WAITE, and FREDERICK E. WEBSTER JR., Defendants.	Case No. 5:10cv00143 - CR CLASS ACTION

PLAINTIFF TODD SEMON'S MEMORANDUM IN OPPOSITION TO THE COMMITTEE DEFENDANTS' MOTION FOR DISCLOSURE OF CERTAIN COMMUNICATIONS REFERENCED IN THE LEAD PLAINTIFF MOTIONS

I. PRELIMINARY STATEMENT

Plaintiff Todd Semon ("Semon") respectfully submits this Memorandum in opposition to the motion by the Committee Defendants demanding disclosure of certain communications between Wolf Popper LLP, counsel for Plaintiffs in *Semon v. Rock of Ages Corp., et al.*, Case No. 5:10cv00143 – CR ("Semon Action"), and Rigrodsky & Long, P.A., counsel for the plaintiff in the now voluntarily dismissed *The Vladimir Gusinsky Revocable Trust v. Rock of Ages Corp.*, Case No. 5:10-cv-00262-CR ("Gusinsky Action") (the "Motion").[1]

Pursuant to the Court's directive at the January 14, 2011 hearing, the parties met and conferred regarding which pending motions have been mooted as a result of the dismissal of the Gusinsky Action. On January 20, 2011, Defendants filed a stipulation among the parties with the Court wherein the parties agreed that, among other motions, Defendants' Motion is moot. In an excess of caution, though, Plaintiff Semon is filing this response since the deadline to do so is today.

However, if the Court agrees with the parties, it need read no further.

Even if the parties had not agreed that the Motion is moot, Defendants' Motion should be denied as moot in any event. The basis for Defendants' Motion was their previous motion to consolidate the Semon Action and the Gusinsky Action, which generated the competing motions in the Semon and Gusinsky Actions for the appointment of lead plaintiff and lead counsel if Defendants' motion to consolidate the actions was granted. Plaintiff Gusinsky has voluntarily dismissed his entire action. *See* Gusinsky Dkt. No. 82. Thus, Defendants' motion to consolidate is moot. Since Gusinsky's Action no longer exists, the motions for the appointment of lead plaintiff and lead counsel in the consolidated cases are moot. In short, the Motion is moot and it would be a waste of judicial resources for the Court to consider it.

[1] The "Committee Defendants" (*see* Semon Dkt. No. 80; Gusinsky Dkt. No. 65) consist of Defendants James L. Fox, Pamela G. Sheiffer, and Frederick E. Webster, Jr. The remaining Defendants joined in the Motion. *See* Semon Dkt. Nos. 81, 82, 83 (filed January 4, 2011); Gusinsky Dkt. Nos. 66, 67, and 69.

However, in the event that the Court considers the Motion, Plaintiff Semon submits that it should be denied on the merits.[2]

II. ARGUMENT

A. Defendants' Motion Should Be Denied

Defendants' Motion is fundamentally flawed. The Motion rests on their opposition to the appointment of lead plaintiffs/lead counsel. However, Defendants lack standing to challenge such appointment. *See generally Howard Gunty Profit Sharing Plan v. CareMatrix Corp.*, 354 F. Supp. 2d 18, 22 n.2 (D. Mass. 2000). Since Defendants have no standing to challenge the appointment of lead plaintiffs/lead counsel, it logically follows that there is no basis for them to claim entitlement to documents in connection with making such a challenge.[3]

Notably, Defendants' motives in bringing the instant Motion are dubious at best. Although expressed in terms of the no longer extant competing lead plaintiff motions,[4] their true motives are expressed later in the Motion, that "no case ought to proceed." (Defts' Motion at 2; emphasis in original.) A motion to compel the production of communications between counsel for Plaintiffs is simply not the proper forum for another of Defendants' repetitious efforts to dismiss the case

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[2] Pursuant to the Local Rules, Defendants sent an e-mail to Mr. Waldman a few days before filing the Motion (the e-mail was sent only to Mr. Waldman and not to any of the other counsel representing Mr. Semon). Mr. Waldman was on vacation at the time and his e-mail system generated an automatic response to Defendants informing them that he was out of the office and that he would not return until January 3, 2011, and that he would not have access to e-mail. Nevertheless, Defendants did not wait for a response from Mr. Waldman or contact any of the other counsel for Mr. Semon or Mr. Waldman's assistant that he had identified in his e-mail automatic response. By the time Mr. Waldman returned from vacation, he did not have time to consider Defendants' e-mail and respond before Defendants filed the Motion on January 3, 2011.

[3] As Plaintiff observed in his Reply Memorandum In Response To The Committee Defendants' Opposition To Plaintiff Semon's Cross-Motion To Be Appointed Lead Plaintiffs And Approval Of Selection Of Lead And Liaison Counsel, at 2 (Semon Dkt. No. 85), allowing Defendants to have a say in "'determining whether 'the representative parties will fairly and adequately protect the interests of the class,' . . . is a bit like permitting the fox, although with a pious countenance, to take charge of the chicken house.'" *Hemming v. Alfin Fragrances, Inc.*, 1990 U.S. Dist. LEXIS 9193, at *8-9 (S.D.N.Y. July 25, 1990), *quoting Eggleston v. Chicago Journeyman Plumbers' Local Union No. 130*, 657 F.2d 890, 895 (7th Cir. 1981).

[4] As indicated above, the lead plaintiff motions are moot and, as such, so is Defendants' Motion.

(especially since the issue is moot). Defendants' Motion is nothing more than a sideshow preview of their *in futuro* motion to dismiss the Amended Complaint.

Further, Plaintiff Gusinsky, prior to filing his voluntary dismissal of the Gusinsky Action, filed his Response of the Vladimir Gusinsky Revocable Trust to the Committee Defendants' Motion for Disclosure of Certain Communications Referenced in the Lead Plaintiff Motions. *See* Gusinsky Dkt. No. 77. Plaintiff respectfully refers the Court to the Gusinsky Opposition to the instant Motion as well.[5]

III. CONCLUSION

Defendants' Motion should be denied as moot and, if not moot, then on the merits.

DATED: January 20, 2011

Respectfully submitted,

_/s/ Chet B Waldman

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[5] Unlike the Gusinsky Opposition, however, Plaintiff Semon is not asking the Court for sanctions with respect to this Motion.